

FILED

OCT 16 2020

Clerk, U S District Court
District Of Montana
Billings

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASHLEY WHEELER,

Defendant.

Cause No. CR 07-135-BLG-SPW

ORDER

On September 29, 2020, the Court denied Defendant Wheeler's motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) in light of the COVID-19 outbreak. *See* Order (Doc. 273). On October 5, 2020, Wheeler requested reconsideration of that ruling. *See* Mot. for Reconsideration (Doc. 274). On October 8, 2020, Wheeler appealed the Order of September 29. *See* Notice of Appeal (Doc. 275).

Wheeler's motion for reconsideration is not cognizable under the Local Rules, the Federal Rules of Criminal Procedure, or the Federal Rules of Appellate

Procedure. Jurisdiction has passed to the Ninth Circuit Court of Appeals. *See, e.g.,* Fed. R. App. P. 4(b)(3)(A); *United States v. Najjor*, 255 F.3d 979, 983 (9th Cir. 2001).

For what it is worth, Wheeler's motion for reconsideration also fails to persuade the Court that extraordinary and compelling reasons justify reducing her sentence. The Court was aware of Wheeler's asthma when it denied her motion. The United States asserted, without contradiction by Wheeler, that her asthma is well controlled. The Court also knew that Wheeler's medical records failed to substantiate her claim of chronic bronchitis and that Wheeler prevaricated about chronic obstructive pulmonary disease (COPD). *See, e.g.,* Mot. (Doc. 270) at 8; U.S. Resp. (Doc. 271) at 12–13; Order (Doc. 273) at 2.

Wheeler's original motion did not include information about her mother's needs. *See* Mot. for Reconsideration (Doc. 274) at 3. Had she done so, the Court would have acknowledged that the guideline permits consideration of reasons other than, or in addition to, medical condition, age, or the specified family circumstances. *See* U.S.S.G. § 1B1.13 cmt. n.1(D). But neither Wheeler's medical conditions, nor her family circumstances, nor both together make her situation so distinct from most other inmates as to warrant early release.

Accordingly, IT IS ORDERED that Wheeler's motion for reconsideration

(Doc. 274) is DISMISSED for lack of jurisdiction.

DATED this 16th day of October, 2020.

A handwritten signature in blue ink, reading "Susan P. Watters", is written over a horizontal line.

Susan P. Watters
United States District Court